



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

FEB 20 1984



The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

We have enclosed, as requested by your office on November 21, 1984, our views on the Secretary of the Interior's responses to your June 26, 1984, letter regarding our report, Economic Uses of the National Wildlife Refuge System Unlikely To Increase Significantly (GAO/RCED-84-108, dated June 15, 1984). Your office concluded that while many of Interior's responses were sufficient, some were in need of further clarification from Interior. Thus, your office asked for our views on the unresolved issues, so that the Subcommittee could pursue them further with Interior. It was agreed that the American Petroleum Institute's response to your letter of June 26 was sufficient and thus did not require any additional work on our part.

The enclosure to the letter provides our report recommendations and other issues raised in your letter to the Secretary that your office considered unresolved, the Secretary's response, and our views on Interior's response.

Sincerely yours,

J. Dexter Peach
J. Dexter Peach
Director

Enclosure

GAO VIEWS ON INTERIOR RESPONSES TO QUESTIONS
RAISED ABOUT ISSUES ON INCREASED ECONOMIC
ACTIVITIES IN WILDLIFE REFUGES¹

GAO RECOMMENDATION 2:

"We recommend that the Secretary of the Interior issue regulations concerning the conduct of oil and gas operations, especially seismic surveys, on NWRS [National Wildlife Refuge System] lands..." (See p. 30 of GAO report.)

Department of the Interior Response:

"We agree that additional guidance on oil, gas, and related exploration activities (including seismic surveys) on refuges is needed. Accordingly, FWS [Fish and Wildlife Service] is developing a chapter for the Refuge Manual dealing with these subjects to be completed by June 1985.

On November 14, 1983, Congress prohibited (Public Law No. 98-151) the Department of Interior (DOI) from processing or granting any lease applications to refuge lands outside Alaska (except in the case of drainage or where mineral rights were held by State or private parties) unless DOI first undertook explicit rulemaking and extensive environmental analyses. The Secretary informed Congress on January 31, 1984, . . . that the "Department has no plans to allow oil and gas activities on the wildlife refuges" in the lower 48 states. In our considered view, these two circumstances preclude the need to revise federal regulations relating to oil and gas leasing activities on refuges, except perhaps to conform them to the language of the continuing resolution."

GAO Views on Response:

While Interior states elsewhere in its response that regulations will be issued if refuges are opened to leasing, it currently plans only to develop FWS guidance for internal review and use. While Interior's preparation of manual guidance for refuge managers would be of considerable value, we believe there still is merit in having the procedures made public through the regulatory process. As we stated in our report (see p. 30), this "would allow industry to anticipate what FWS procedures and requirements are likely to be and might alleviate the difficulties refuges have experienced with small companies."

¹Economic Uses of the National Wildlife Refuge System Unlikely To Increase Significantly (GAO/RCED-84-108, June 15, 1984).

Further, while Interior is correct in saying that there will be no federal leasing on refuges in the near term, much of the oil and gas activity on refuges already is taking place because of privately-owned mineral rights, thus the need for regulations.

GAO RECOMMENDATION 5:

"We recommend that the Secretary of the Interior:

--Revise FWS regulations on refuge access to specify under what circumstances access will be granted to oil and gas lessees and other economic users, requiring FWS to specify access provisions in either the lease, permit, or agreement for economic use of a refuge." (See p. 47 of GAO report.)

Department of the Interior Response:

"The GAO report (page 41) correctly quotes the access regulation (50 CFR, Part 26) for entry to persons with an economic use privilege:

'Access to and travel upon a national wildlife refuge by a person granted economic use privileges on that national wildlife refuge should be restricted to a specified area in accordance with the provisions of their agreement, lease, or permit" (emphasis added).'

Please note that the regulation does not make a positive requirement for the provision of conditions associated with such access. Basically this regulation provides the authority and mechanism by which a refuge manager can impose formal access provisions when a demonstrated need exists. Refuge managers can and do impose restrictions on routes of travel, period of use, mode of conveyance, and authorized personnel when necessary. We believe this discretionary authority is more responsive to refuge management needs than any standardized approach for the provision of access."

GAO Views on Response:

Interior believes that the present discretionary authority employed on a case-by-case basis is preferable to standardized criteria. As we reported, however, the refuge managers' discretionary authority has traditionally not been used, and unrestricted access has been allowed. More importantly, oil and gas leases have been viewed by some FWS officials as having guaranteed access rights. As stated on p. 13 of Interior's response, ". . . the United States does not guarantee any right of access to a federal leasehold No case has ever established whether there is an implied right of necessary access across federal lands to reach a federal lease." We still believe that regulations specifically stating under what circumstances access will be granted would help assure that the potential effects of access on wildlife and their habitat are considered.

GAO RECOMMENDATION 6:

"We recommend that the Secretary of the Interior:

--Require FWS to develop a fee system to recover, where practical, the administrative costs associated with processing permits for refuge access and use." (See p. 47 of GAO report.)

Department of the Interior Response:

"The GAO report identifies three broad areas of concern as it relates to this recommendation: rights-of-way, economic use, and recreational use. Fees for processing rights-of-way applications are established by 50 CFR, Part 29. No processing fee system is in place to cover other economic or recreational uses. It is our view that the overhead costs associated with processing such permits are recovered in fair-market-value received for goods and services. It should also be recognized that permits may be issued based on first come-first served, lotteries, highest bid, or negotiation. Since all of these selection processes are open to the public-at-large, we see no advantage to the government or the private citizen in charging a separate "filing" fee. Contrary to the implication of the GAO report (pages 42 and 43), we believe our existing approach is consistent with the Office of Management and Budget Circular A-25 and the FWS Financial Management Manual Part 346--Cost Recovery."

GAO Views on Response:

We do not believe FWS' existing approach to recovering administrative costs is in conformance with directives and instructions. We recognize that cost recovery can be exempted in certain cases if justified to Interior's Office of Financial Management. According to the Office's records, however, FWS has not provided such justification for an exemption from the Department's requirements.

Further, in following up on Interior's response to your letter, we were advised that Interior's contention that FWS' existing approach is consistent with Office of Management and Budget Circular A-25 and the Interior Financial Management Manual Part 346--Cost Recovery, pertains only to those instances where fees are charged.

SUBCOMMITTEE ISSUE 2:

"Please list the MBO [Management By Objectives] expansions for the NWRS expected to be implemented by June 30, 1984, the status of each, and the expansions for any period after that date. Please explain in each case how the DOI is ready and capable to deal with each expansion and how each is compatible with the refuge." (See p. 2 of Subcommittee letter.)

Department of the Interior Response:

"We regret that we are unable to formulate an appropriate response to your request since it is impossible to segregate "MBO expansions" from all other expansions. Increases in use since 1981 have been generated for a variety of reasons: new refuges have been acquired, new public use facilities have been constructed, land management strategies have been modified, public demands for wildlife-related recreation have changed, local demand for land-based commodities has fluctuated, and wildlife population management needs have been better defined. Generally some combination of these factors has been responsible for increases (and some decreases) within the NWRs. It is doubtful that any increases in use have occurred solely as a result of the existence of the MBO."

GAO Views on Response

Under MBO VI, Task B, FWS was required to identify the potential for "expansions" (i.e., increased economic and public activities) and report this potential expansion to the Secretary annually. Under this MBO, FWS requested in July 1982, as stated in our report (see p. 9), that the wildlife refuges identify expansion potential for a variety of economic and public uses. The responses were incorporated into FWS' March 1983 report, Potential Expansion of Compatible Economic and Public Uses on National Wildlife Refuges.

In an April 1, 1983, memorandum to all regional directors, the FWS Director said "We have consolidated the information which you submitted regarding potential for expanded economic and public use of NWR's We would like you to begin implementing those identified increases as soon as possible, subject to the following guidelines:" Also, the Department shows in Enclosure 3 to its response that a tracking system to monitor expanded uses was established in August 1983. In addition, we obtained a listing of expansions provided to the Secretary in January 1984 which showed an increase in the number of refuges reporting certain economic and public uses. Thus, FWS, in fact, did collect data on MBO expansions, and DOI should have been able to list for you MBO expansions implemented by June 30, 1984.

Interior also did not respond on how they are ready and capable to deal with each expansion and how each is compatible with the refuge. In this regard, FWS headquarters does not have the data needed to respond to this question.

SUBCOMMITTEE ISSUE 4:

"Also, I ask you to explain how, and to what extent, the public is allowed to participate in compatibility determinations for each use application at each refuge. Also, who makes each such compatibility determination and how is it communicated to the public"? (See pp. 2 and 3 of Subcommittee letter.)

Department of the Interior Response:

"The determination of compatibility is based on an analysis of a specific action in terms of the establishing purposes for a given refuge. This determination is made on a case-by-case basis by the refuge manager (under the delegated authority of the Secretary under the Refuge Administration Act) with regional director concurrence where warranted. The public is afforded an opportunity to comment on proposed activities and uses of refuge lands whenever appropriate. For example, activities such as hunting, fishing, and recreational uses of refuge areas are subject to the federal rulemaking process that requires full public notice of proposed regulations in the Federal Register and a minimum of 30 days for public review and comment prior to initiation of any activity. The public is also provided opportunities to comment on all proposals that are subject to the public notice and review provisions of the National Environmental Policy Act. In addition, all refuge master planning efforts, which may address a wide range of potential refuge uses, include extensive public involvement programs. Uses that do not fall into one of the above-described categories may or may not be the subject of public review, depending on the significance and sensitivity of the proposed use."

GAO Views on Response:

Interior's response mentions, but is not clear on, which uses are subject to public review. As such, it is difficult to be sure what the public involvement is, particularly with respect to economic uses. Our understanding is that public comments are generally not sought on individual use decisions such as entering into agreements for grazing or farming on a refuge. However, public comments are generally sought when a refuge-wide use, such as hunting, is proposed.

SUBCOMMITTEE ISSUE 6:

"(a) Please provide a table showing for each refuge whether or not there is a master and management plan, the date of the plan, the date it was last revised, and a statement as to whether or not it is current and adequate. If there is none or it is outdated, please state why and the FWS plans for adopting or updating it. (b) If there is no such plan or it is out of date, how does [sic] FWS refuge managers determine compatibility?" (See p. 3 of Subcommittee letter.)

Department of the Interior Response:

"Recent master planning efforts on refuges are summarized in Enclosure 5. Under current FWS guidance, master planning is a comprehensive resource inventory and analysis process that establishes refuge objectives and develops broad, long-range management strategies to meet those objectives. Regional directors determine regional master planning priorities and scheduling based on periodic review of refuge resources, public use concerns, political controversies, and other factors. Often a refuge does not require

extensive master planning because its management programs are stable with well-established, up-to-date refuge objectives; or because the refuge has a relatively simple management program (e.g., a small island refuge).

Management planning is an ongoing effort on all refuges that describes particular habitat, population, public use, and administrative management programs needed to achieve refuge objectives. Enclosure 6 lists various types of refuge management planning efforts, as specified in the Refuge Manual. The portfolio of management plans prepared for a specific refuge may differ from that of other refuges as not all plans are applicable to all refuges. All refuge management plans are periodically reviewed and updated.

With respect to compatibility determinations, refuge master and management plans provide a useful framework for analyzing refuge resources and determining the broad compatibility of various uses with refuge purposes on a refuge-wide basis. However, such plans are not always a prerequisite to making sound compatibility determinations. As the GAO report points out (page 10), compatibility is fundamentally a site-specific determination based on the analysis of a specific action as it relates to the major purposes for which a given refuge was established. Even where comprehensive refuge planning efforts have taken place, the compatibility of a newly proposed activity is still subject to a site-specific analysis."

GAO Views on Response:

Interior's Enclosure 5, referred to above, shows FWS has master plans for 92 out of a total of 418 refuges, but does not show the status of the remainder. Although Interior says they are periodically reviewed and updated--which should be every 2 years, according to their manual--of the 92 listed, only 20 are current, i.e., completed between 1982 and 1984. Interior did not state when it intends to update these plans or whether they are current and adequate. Their response also did not address your question as to the status of management plans.²

SUBCOMMITTEE ISSUE 8:

"The API [American Petroleum Institute] data shows that only nine refuges have done 'baseline environmental studies or wildlife surveys for specific activities.' Why are so few performed? What is the cost of such surveys? What are the personnel and budget

²Master plans are long-range strategies of a refuge, describing which planning and management activities are to be accomplished. Management plans, on the other hand, are based on the objectives and strategies set forth in the refuge master plan, and describe, in detail part or parts of the master plan that can be implemented without significantly increasing the funding.

levels for FY-1983, 1984, and 1985 for such surveys?" (See p. 4 of Subcommittee letter.)

Department of the Interior Response:

"Refuges routinely conduct numerous wildlife and habitat surveys that provide baseline information. Waterfowl inventories, vegetative surveys, water level monitoring, Christmas bird counts, mid-winter bald eagle counts, and colonial bird nesting surveys are but a few examples of the kinds of baseline data collected on refuges. The nature and extent of these surveys varies from refuge to refuge depending on their specific management objectives. These baseline data are used to test the influence of many environmental influences, whether internal or external to the refuge. They also serve to measure the success of ongoing refuge management practices. Refuges expended approximately \$2.4 million and 141,000 staff hours in FY-1983 collecting baseline information. The FWS has not programmed FTE's or funds specifically to these functions in FY's '85 and '86 since they are considered an integral component of each refuge's management operation. During recent years the FWS has increased the emphasis on collection of high quality data by improving the biological capability of the NWRS." (See Recommendation 3.)

GAO Views on Response:

The nine refuges you referred to were those which API found had done research on "the effects of oil and gas activity on wildlife populations or other refuge resources...." Thus it seems clear that the question in your letter to Interior related solely to oil and gas related studies. Interior's response, however, appears to relate to all types of wildlife and habitat surveys in addition to oil and gas, and does not directly respond to your question, although on p. 3 of the response, Interior does cite five studies on oil and gas impacts and highlights the efforts of the Patuxent Wildlife Research Center. The costs of these activities, however, were not identified.

SUBCOMMITTEE ISSUE 9:

"Please provide a table for FY 1980 to the present showing these [hiring] restrictions. The table should show the personnel levels FTEs [full time equivalents] authorized annually by the Congress and by the DOI and the actual number of personnel on-board currently, the vacancies, and the DOI plans for lifting these restrictions." (See p. 4 of Subcommittee letter.)

Department of the Interior Response:

"There are no restrictions, per se, on hiring except those imposed by the normal budgeting process. The Administration's goal of reducing the level of federal employment has been met with minimum impact on the NWRS. In fact, FTE allocations for refuges have shown modest gains during a period when overall federal hiring has been reduced. This is not meant to imply that every

refuge has the staffing it wants or ultimately needs. But it does illustrate that this Administration has been sensitive to the needs of the NWRS. This sensitivity has also been reflected in budget increases for the NWRS over the past four years.

The following table shows estimated need (as expressed in the budget request to Congress) and actual allocation from 1980 to present. Actual allocation figures are generated through the Office of Management and Budget to DOI, and ultimately to FWS. These allocations are for total FTE's (i.e., none are specific to the NWRS). FWS then determines how much of the total will be allocated to the NWRS. Projecting to the end of this year, we expect virtually all FTE's to have been utilized. With the exception of vacancies impacted by the A-76 process, all existing vacancies are under active recruitment."

PERSONNEL ALLOCATIONS FOR REFUGES, FY 1980 - 1985

FY 1980		FY 1981		FY 1982	
(FTP)	(FTP)	(FTP)	(FTP)	(FTP)	(FTE)
Estimated Need	Actual Allocation	Estimated Need	Actual Allocation	Estimated Need	Actual Allocation
1,310	1,334	1,353	1,309	1,367*	1,834*

FY 1983		FY 1984		FY 1985	
(FTE)	(FTE)	(FTE)	(FTE)	(FTE)	(FTE)
Estimated Need	Actual Allocation	Estimated Need	Actual Allocation	Estimated Need	Actual Allocation
1,834	1,887	1,985	1,890	1,963	?

*Estimated need is expressed as "full-time permanent" (FTP) but actual allocation as "full-time equivalents" (FTE). FTP is the number of permanent employees who work full time (260 days a year). It does not count any employees who are less than full time. FTE means the total of all employee work days divided by 260. This includes full time, part time, temporary, and others. This procedural change commenced during FY 1982, so the numbers are not comparable for that year; similarly, FY's 1980-81 are not comparable with FY's 1983-85.

GAO Views on Response:

Interior notes that DOI and FWS control how many personnel are allocated to refuges. As pointed out in Secretary Clark's response, it is difficult to compare staffing changes over the past 5 years because of the changes in personnel calculation methodology. Although implementation of identified expansions was expected to occur by June 30, 1984, we noted that for FY 1984, FWS was allocated 95 FTEs less than its "estimated need." Also, as

noted in our report, we found in the refuges we visited that the budget increases for NWRS were going primarily to road and facility repair, not to meeting its personnel needs.

SUBCOMMITTEE ISSUE 11:

"Why is it sound policy to explore for or develop minerals on the NWRS considering current and projected demands for these minerals and the fragile nature of NWRS?" (See p. 4 of Subcommittee letter.)

Department of Interior Response:

"The development of oil and gas and other minerals on refuge lands outside Alaska depends on the status of the mineral rights. Where mineral rights are held by state or private parties, subsurface owners have the general right to explore for and develop mineral interests at their option subject only to reasonable regulations regarding access and the protection of refuge resources. In these cases, the decision to develop mineral resources is outside the total control of the DOI.

As a general matter regarding federal oil and gas leasing, the DOI, as the federal leasing agency, is obligated to review all applications for lease to lands not closed by law or regulation, and process valid applications in a responsive manner. Mineral exploration and development by leaseholders is at their option subject to federal leasing regulations continued in 43 CFR, Parts 3000-3100.

With respect to refuge lands outside Alaska, however, the Secretary has indicated (Enclosure 2) that there are no plans for federal leasing on refuges for the present, except in response to situations where federal oil and gas is being drained from beneath refuge lands by private, off-refuge oil and gas operations. Where a "drainage" condition has been determined to exist, a lease may be issued in order to recover royalties properly due the United States (i.e., the public) from the oil and gas being drained. Refuge resources are protected by stipulations attached to the lease or may be incorporated in a permit issued by the Fish and Wildlife Service. By ensuring that the United States receives compensatory royalties for removal of oil and gas, lease issuance serves to protect the public interest in the subsurface resources of refuge lands."

GAO Views on Response:

Interior's response is an accurate description of current policy, but strictly speaking does not address your question concerning the balance between mineral demands and the fragile nature of the NWRS.

SUBCOMMITTEE ISSUE 13:

"Please explain the access rights of federal oil and gas lessees and those of reserved mineral interests. The [GAO] report notes that the Bureau of Land Management (BLM) officials believe that a 'federal oil and gas lease does not grant any right of access' and the BLM therefore requires issuance of temporary use permits. Please explain why this belief is not applied to the NWRS and why such temporary permits are not used." (See p. 6 of Subcommittee letter.)

Department of the Interior Response:

"The access rights of federal oil and gas lessees and owners of reserved minerals are not identical. In the case of federal leases, including leases to refuge lands, the United States does not guarantee any right of access to a federal leasehold. However, the lease does guarantee the right to use the surface of the leased land for oil and gas exploration and production, unless the lease contract contains specific stipulations limiting or removing the right of surface use of the lease (so-called "no surface occupancy" stipulations). Federal agencies have been reluctant to deny discretionary rights-of-way to federal leases because that action appears inconsistent with the grant of lease rights. No case has ever established whether there is an implied right of necessary access across federal lands to reach a federal lease.

The specific conditions governing access are determined by the surface managing agency and may be communicated to the lessee through issuance of a permit stipulating those conditions. The surface manager may restrict routes of access, season of access, and other factors as conditions of the permit in order to protect surface resources, and assure compatibility of the lands in question.

With respect to reserved state or private mineral interests, reasonable access across federal lands, including refuge lands, is established in case law. Again, reasonable access restrictions to protect surface resources may be stipulated by the surface managing agency and administered through issuance of an access permit. However, access itself may not be denied and unreasonable restrictions may not be imposed."

GAO Views on Response:

Interior's response accurately states the situation regarding the access rights of a federal lessee or a private mineral owner, and says with respect to the former that the lessee's access may be restricted by a permit. However, it does not address what FWS policy is or why that policy differs from the one used by BLM.

SUBCOMMITTEE ISSUE 14:

"When is economic use considered so 'beneficial' to a refuge that no access permit is required?" (See p. 4 of Subcommittee letter.)

Department of the Interior Response:

"As was discussed in responding to Issue 10 above, many "compatible-supportive" economic uses of refuges provide direct benefit to refuge management programs. Generally we refer to persons involved in such use as "refuge cooperators." To remain viable, the cooperative working relationship must be premised on mutual respect for both parties' interests and objectives. For example, no good farming cooperator would intentionally damage refuge roads or property in gaining access to a farm field. It would not be in his best interest to do so. If damage somehow happened to occur, the cooperator would in most cases make necessary repairs without being notified by the refuge manager. Likewise, a good refuge manager would attempt to develop a harvest pattern (for crops left in the field for wildlife) that takes into account the type of equipment used by the cooperative farmer. In all likelihood neither of these considerations would be specified in an agreement, and certainly the cooperator would not be issued a permit for access to fields being farmed. In such cases, access is implied as a part of the cooperative agreement. This represents but one example of a "beneficial" economic use where the provision of access by special permit is unnecessary."

GAO Views on Response:

Interior's response assumes that the persons performing the economic use will be so cooperative and conscientious that damage is unlikely to occur and, if it should, would be repaired without needed FWS involvement. Interior, however, did not make it clear why a "compatible-supportive" user would necessarily be more conscientious than any other user." As stated earlier, (see page 2) we continue to believe access provisions in permits or use agreements would assist in protecting wildlife and their habitat by ensuring that the effects of such access are considered by refuge managers.

SUBCOMMITTEE ISSUE 15:

"Please review the seemingly inconsistent practices of the regional offices concerning the payment and waiver of fair-market-value fees, including the basis for the calculations, and provide the results thereof. Please explain the basis for the waivers in Region 2 and 6. What action will the FWS take to recover the fair-market-value charge of \$17,500 and processing fee charged but not collected due to an "oversight"? Why is the cost of comparability studies not reflected in the fees?" (See p. 6 of Subcommittee letter.)

Department of the Interior Response:

"All FWS regional offices generally follow the basic procedures outlined in 50 CFR, Part 29.21 in assessing fees for right-of-way permits. Fair-market-value payments are based on the prevailing rates charged for similar use of privately-owned land in the area. The decision to waive the requirement for such payment is made on a case-by-case basis by the appropriate regional director. Waivers are sometimes granted to federal, state, and local agencies when the proposed activity is considered to be of benefit to the refuge involved, or where the agency is exempted from payment under another federal law.

The GAO report refers to 15 right-of-way permits issued to governmental agencies in North Dakota, New Mexico and Texas in which no fair-market-value compensation was received by the FWS. The waivers granted to the state highway departments in Texas and New Mexico were for rights-of-way required for Highway Federal Aid Projects. No right-of-way payment was required for two water pipeline projects in North Dakota since comparability studies revealed that private landowners were receiving no compensation for similar use of their land. Four other permits for refuge rights-of-way in North Dakota were issued without compensation because they were determined to be of benefit to the FWS. The remaining seven instances of payment waivers reported for North Dakota involved the granting of rights-of-way on lands in which only a waterfowl easement interest was owned by the FWS. In these cases compensation was not actually waived since none was due.

Our review of the cases cited above raises concern that the regions are not in compliance with the provisions of 16 U.S.C. 668dd and CFR 50. Accordingly, FWS will conduct a review of existing fee waiver practices and develop appropriate guidance to regional directors to correct any discrepancies.

The cost of comparability studies required to determine fair-market-value payments are, in most cases, included in the fees collected. However, recovery of these costs is occasionally waived when a regional director deems the cost of fee processing to be greater than the amount to be recovered.

The GAO report alleges that an "oversight" by the Region 2 staff resulted in the failure of the FWS to collect a fair-market-value charge of \$17,500. Our review has shown that this was not the case. The incident referred to involved an oil production operation by Amoco on the San Bernard Refuge in Texas. The oil company had leased the rights to the State-owned minerals beneath the refuge, and requested access onto the refuge to begin development. It was determined that in accordance with a 1982 Regional Solicitor's opinion (Enclosure 8), no fee could be levied for such access. An access permit was issued containing stipulations designed to minimize the impacts of this activity on refuge resources. The \$17,500 was actually an estimate of the cost of the required precautionary and mitigation measures, and was never intended as an access fee. Monitoring of the operation by the

refuge staff revealed that the permittee fulfilled its obligations in a satisfactory manner and no monetary payment was ever requested from Amoco.

The GAO report (page 29) points out discrepancies between regions in fee collection for oil and gas activities on refuges. It attributes this in part to varying interpretations on the Regional Solicitor's opinion mentioned above. We recognize this as a problem and plan to provide more standard guidance regarding oil and gas operations in the Refuge Manual chapter being prepared." (See Recommendation 4.)

GAO Views on Response:

Based on additional information provided since our report, we are satisfied both with the explanation of the 15 right-of-way permits issued without compensation in North Dakota, New Mexico, and Texas, and with FWS conducting a review of existing fee waiver practices.

Our information on the uncollected \$17,500 fair market value charge at the San Bernard Refuge differs somewhat from that presented by Interior. The permit involved dredging a channel approximately 3,000 yards or 185.85 rods long for barge traffic, and 31.85 acres to dump the dredged soil. The 1982 appraisal done by FWS stated that the channel was strictly for the use and benefit of the permittee, and valued the use as follows:

1. The estimated comparable value for a large diameter common carrier line right-of-way in the county was estimated at \$40 a rod, or \$7,434.
2. The spoil area was found to be equal in size to about 10 drill sites which sell for about \$1,000 each. The appraisal stated that this (10 x \$1,000 or \$10,000) was a reasonable charge for the use since the high salt content of the dredge spoil leaves the land with little of its former use due to difficulties in revegetating.

Thus, only \$10,000 of the charge was considered as mitigation payment. As your office requested, a copy of this appraisal document is being furnished separately to Subcommittee staff.

SUBCOMMITTEE ISSUE 17:

"I request that the DOI examine the matter [coordination] and revise DOI procedures and regulations to ensure that all administrative proceedings of the IBLA [Interior Board of Land Appeals], the BLM, or other DOI agencies involving actions affecting the NWRS are properly noticed to the FWS and that the Solicitor's office assign lawyers to properly represent the FWS in such proceedings. I also request procedures to ensure better and timely coordination between the FWS and the BLM and their respective Assistant Secretaries in the development of policies and regulations affecting the NWRS." (See p. 7 of Subcommittee letter.)

Department of the Interior Response:

The GAO report speaks at some length (Chapter 5) on the subject of the "Hartley" (Esdras K. Hartley, Impel Energy Corp., 57 IBLA 319 (1981) decision and its impact on efforts to revise the DOI's oil and gas leasing regulations. Both FWS and the Solicitor's Office were notified of the Hartley appeal in which the Interior Board of Land Appeals affirmed the BLM rejection of the original lease offers as being incompatible with refuge purposes. While there was communication among those involved during this period, coordination between bureaus and Assistant Secretaries can always be improved. On May 27, 1980, the FWS and BLM signed a Memorandum of Understanding for coordination purposes. This document will be reviewed and amended as necessary to ensure adequate coordination on oil and gas issues.

GAO Views on Response:

While we recognize that direct FWS legal representation is not always practical, we believe FWS needs both better notification and more timely communication of appeals affecting refuges. It is unclear in Interior's response as to whether the Memorandum of Understanding would meet your request for actual coordination procedures.